

Oct. 29, 2007) (same); *City of Tulsa v. Tyson Foods, Inc.*, Case No. 01-CV-900-B(X), Dkt. #96 (N.D. Okla. May 3, 2002) (same); *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 199 F.R.D. 677 (N.D. Okla. 2001) (same). Any discovery beyond net worth/balance sheet information requires “sound reasons” which Plaintiffs have not articulated in this case. *See City of Tulsa*, Dkt. #96 at 56.

In each of the foregoing cases, the reasoning of the moving party was the same as Plaintiffs’ reasoning in this case. Notably, in each of the foregoing case, the scope of relevancy under Rule 26(b) was limited to discovery related to the defendant’s net worth as reflected on the defendants’ balance sheet(s). *Cf. General Elec. Capital Corp. v. Learn Corp.*, 215 F.R.D. 637, 640 (D. Kan. 2003) (resisting party has burden to demonstrate discovery is outside the scope of Rule 26(b)). As such, the punitive damage issue does not amount to a “sound reason” for allowing broad discovery into a party’s financial information over the net worth information allowed in this jurisdiction’s case law.

The unpublished case of *Cruce v. Schuchmann*, 1993 WL 139222, 1993 U.S. Dist. LEXIS 5608 (D. Kan. March 30, 1993), cited by Plaintiffs at the March 2 hearing, does not change this analysis. The *Cruce* case involved individuals—not corporate entities—who would not have typically had balance sheets showing their net worth. The *Cruce* court noted that it was the burden of the party resisting the discovery to show that the net worth information was available from alternative sources. *See Cruce*, 1993 U.S. Dist. LEXIS 5608, at *2. In this case, Peterson has sustained this burden, demonstrating that its net worth information is available from the balance sheets produced to Plaintiffs. Indeed, Plaintiffs’ expert David Payne based his net worth opinions on Peterson’s fiscal year 2007 balance sheet. Thus, the *Cruce* opinion does not

entitle Plaintiffs to tax returns, as suggested, or otherwise change the scope of discovery under this jurisdiction's precedent.

At the March 2 hearing, Plaintiffs also suggested that cross-examination of a rebuttal witness on the issue of punitive damages was a sound reason for allowing broad ranging discovery into Peterson's financial affairs. Of note, however, Plaintiffs did not cite any authority in support of their contention that cross-examination is a "sound reason" for allowing discovery beyond net worth information. Likewise, Plaintiffs did not explain why the plaintiffs in the four Northern District cases, all of whom would presumably have also been entitled to cross-examination of rebuttal witnesses, were not allowed discovery beyond balance sheet information. In short, whether the issue is supporting a punitive damage claim or cross-examining a rebuttal witness on the punitive damage claim, the reason for the discovery remains the same: *the punitive damage claim*. In any event, Peterson again represents that, in rebuttal of Plaintiffs' expert opinions, it does not intend to rely any information not produced to Plaintiffs.

Moreover, because of Peterson's recent organizational changes, the additional information Plaintiffs seek lacks any relevance to Peterson's net worth at the time of trial in September 2009, when—if ever—the additional financial information would have any purported relevance. Certainly, this tenuous relevancy is far outweighed by the potential harm to Peterson that may be occasioned by disclosure of its otherwise private financial information. *Cf. General Elec. Capital Corp.*, 215 F.R.D. at 640 (resisting party has burden to demonstrate potential harm of discovery outweighs "marginal relevance").

On a related note, with regard to the audited balance sheets, the Court inquired as to the relationship between Peterson and L&L Farms, whose information had been redacted from the audited 2004 to 2007 balance sheets. In response to the Court's prior inquiry, Peterson and L&L

Farms are currently separate business entities. For a period of time, Peterson owned a minority interest in L&L Farms; however, it no longer holds any interest in L&L Farms. *See* Affidavit of Blake Evans, Ex. A hereto.¹ As such, Peterson maintains that the marginal relevance, which is wholly absent with regard to the L&L Farms information, is outweighed by the potential harm occasioned by the disclosure of information which is clearly unrelated to Peterson's net worth and Plaintiffs' allegations in this lawsuit.

In any event, as Peterson informed the Court, it has previously produced five of its balance sheets to Plaintiffs: One balance sheet prepared by Peterson's then-chief financial officer (PFIRWP-063693) and four balance sheets from Peterson's audited financials (PFIRWP-093419 through PFIRWP-093426). It likewise has promised to produce its fiscal year 2008 balance sheet when it becomes available. This information is all that has been shown to be relevant to Plaintiffs' punitive damage claim, and Plaintiffs have yet to articulate a sound reason for additional discovery into Peterson's private financial affairs. Thus, Peterson has met its obligation to produce financial information under this District's application of Rule 26 to a prayer for punitive damages. Likewise, Peterson has sustained its burden to show (1) that Plaintiffs' requests are outside the scope of Rule 26(b); and (2) for good cause, that it is entitled to the protection requested in its Motion.

WHEREFORE, Defendant Peterson Farms, Inc. requests the Court to grant its Motion for Protective Order (Dkt. #1882), limiting the scope of Plaintiffs' discovery of financial information to balance sheet information.

¹ Because of the proprietary and confidential nature of some of the financial information in the Affidavit, the exhibit will be provided to the Court under separate cover for an in camera review pursuant to Paragraphs 5 and 6 of the Court's Confidentiality Order (Dkt. #985), relating to information designated "confidential attorneys' eyes only."

Respectfully submitted,

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